

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	NOTICE OF INTENT TO SEEK
)	PERMANENT BAR
David Michael Scaffè,)	
)	
<u> Respondent.</u>)	File Number 09032

The Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), under the authority of the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2008), and the Uniform Securities Act (the "Prior Act"), S.C. Code Ann. §§ 35-1-10 to 35-1-1590 (Supp. 2005), upon due consideration of the subject matter herein and having reason to believe that David Michael Scaffè ("Scaffè" or "Respondent") violated one or more provisions of the Act and the Prior Act and regulations promulgated thereunder, does hereby notify Respondent that the Division intends to seek a permanent bar from registration as a broker-dealer agent and as an investment adviser representative in South Carolina in the future, pursuant to Section 35-1-412 of the Act. In accordance with S.C. Code Ann. § 35-1-412(g), the Division hereby alleges the following:

FACTUAL HISTORY

1. Respondent, at all times material herein, was a resident of South Carolina.
2. Respondent is a natural person whose last known address, as filed on the Central Registration Depository maintained by the Financial Industry Regulatory Authority ("FINRA"), was 254 Seven Farms Drive, Bldg. 400 Unit 102, Daniel Island, South Carolina 29492.

3. During the time period on or about October 6, 2000, to on or about June 17, 2002, Respondent was employed with Prudential Securities Incorporated ("Prudential") and was registered with the Division as an agent of Prudential.
4. During the time period on or about September 17, 2002, to on or about May 13, 2008, Respondent was employed with Andrew Garrett, Inc. ("Andrew Garrett").
5. During Respondent's employment with Andrew Garrett his primary work locations were the Andrew Garrett offices located at 8725 Old Georgetown Road, McClellanville, South Carolina 29458 and 105 South Cedar Street, Summerville, South Carolina 29483.
6. During Respondent's employment with Andrew Garrett he was registered first with the Division as an agent of Andrew Garrett and, effective September 18, 2007, as an agent and investment adviser representative of Andrew Garrett.
7. In or about September, 2001, while employed with Prudential, Respondent became the financial advisor to a South Carolina resident with the initials CFA ("CFA").
8. Following Respondent's termination of employment with Prudential, CFA opened an account at Andrew Garrett in or about October, 2002.
9. In or about November, 2003, Respondent borrowed \$12,500 from CFA.
10. On or about November 21, 2003, Respondent signed a promissory note evidencing the loan from CFA (the "Note").
11. The Note specified that the \$12,500 would be paid in full eighteen months from the date of the Note.
12. The Note specified an interest rate of nine percent per annum.
13. Respondent paid \$1,830 in interest to CFA during 2004 and 2005.
14. Respondent never repaid the principal of the Note even after the Note's maturity.

15. On or about December 20, 2007, at Respondent's request, CFA gave Respondent \$10,000, allegedly for the purchase of stock in a company Respondent called "Privacy Wear" ("Privacy Wear").
16. On or about December 27, 2007, at Respondent's request, CFA gave Respondent \$12,500, allegedly to purchase additional shares of stock in Privacy Wear.
17. CFA has asked for but never received any confirmation that the \$22,500 given to Respondent for the purchase of shares of Privacy Wear was used to purchase shares.
18. Upon information and belief, the money CFA gave Respondent in December, 2007, to purchase shares of stock in Privacy Wear was not used for the purpose intended.
19. On or about April 22, 2008, Respondent solicited from CFA an investment of \$60,000. In return, Respondent guaranteed CFA the greater of \$70,000 or 30,000 shares of a company Respondent represented as Best Energy Services ("Best Energy Services") by November 1, 2008.
20. On or about May 15, 2008, CFA entered a written agreement with Respondent pursuant to which Respondent was to use CFA's investment of \$60,000 described directly above to purchase 30,000 shares of Best Energy Services for CFA.
21. As of July 2, 2009, CFA had not received either shares or the monetary return promised in April, 2008, or the shares of Best Energy Services promised in the May, 2008, written agreement, though Respondent indicated CFA was to receive a return from Respondent by November 1, 2008.
22. Scaffie was designated as the "Financial Consultant" on statements reflecting activity in the individual accounts belonging to CFA.
23. On or about May 13, 2008, Respondent was discharged from Andrew Garrett.

24. The "Termination Comment" section of the Central Registration Depository maintained by FINRA indicates, "Employee terminated for violating his fiduciary responsibilities and the Firm's written supervisory procedures prohibiting the making of loans from firm clients. This was determined, and not denied, pursuant to an investigation initiated after employee was arrested for illegal gambling activities."

APPLICABLE LAW

25. Pursuant to Section 35-1-701(a) of the Act, the Prior Act exclusively governs all actions or proceedings that may be instituted on the basis of conduct occurring before the effective date of the Act.
26. The Act took effect January 1, 2006.
27. Pursuant to Section 35-1-520 (1) of the Prior Act, the Securities Commissioner may by order, suspend or revoke any registration if he finds (a) that the order is in the public interest and (b) that the registrant:
- a. has wilfully violated or wilfully failed to comply with any provision of the Prior Act or a predecessor law or any rule or order under the Prior Act or a predecessor law; or
 - b. has engaged in dishonest or unethical practices in the securities business.
28. Pursuant to S.C. Code Ann. § 35-1-580 of the Prior Act, no order may be entered under any part of Sections 35-1-520 to 35-1-570 or Section 35-1-1475 except the first sentence of Section 35-1-550 without (a) appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, (b) opportunity for hearing, and (c) written findings of fact and conclusions of law.

29. Pursuant to Order Number 97006, each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.
30. Pursuant to Order Number 97006, borrowing money from a client is behavior which is considered contrary to the high standards agents are required to observe, is a dishonest and unethical practice when done by an agent, and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by statute.
31. Pursuant to Section 35-1-412(b) of the Act, the Securities Commissioner may by order, suspend or revoke any registration if he finds that the order is in the public interest and authorized by Section 35-1-412(d) of the Act.
32. Pursuant to Section 35-1-412(d)(13) of the Act, a person may be disciplined under Section 35-1-412(b) of the Act if the person has engaged in dishonest or unethical practices in the securities business within the previous ten years.
33. Pursuant to 35-1-412(g) of the Act, an order may not be issued under Section 35-1-412 without (1) appropriate notice to the applicant or registrant; (2) opportunity for hearing; and (3) findings of fact and conclusions of law in a record.
34. Pursuant to Regulation 13-501(B) of the Act, each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.
35. Pursuant to Regulation 13-501 B(1) of the Act, making misrepresentations to clients, failing to purchase securities clients have paid for, guaranteeing clients against loss in securities purchases, misappropriating client funds, and violating firm policy are all considered contrary to the high standards agents are required to

observe, constitute dishonest and unethical practices when done by an agent, and may constitute grounds for denial, suspension or revocation of an agent's registration, imposition of administrative fines, or such other action authorized by statute.

36. Pursuant to Regulation 13-502 A of the Act, each investment adviser representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.
37. Pursuant to Regulation 13-502 A(6) of the Act, violating firm policy is considered contrary to the high standards investment adviser representatives are required to observe, is a dishonest and unethical practice when done by an investment adviser representative, and may constitute grounds for denial, suspension, or revocation of an investment adviser representative's registration, imposition of administrative fines, or such other action authorized by statute.

NOTICE AND OPPORTUNITY FOR A HEARING

NOTICE is hereby given that the Respondent shall have thirty (30) days from the date of receipt of this Notice of Intent to Seek Permanent Bar ("Notice of Intent") to give written notice requesting a hearing on the matters contained herein to Thresechia Navarro, Securities Division, Post Office Box 11549, Columbia, South Carolina, 29211-1549. In the written Answer, Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Notice of Intent, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If Respondent is without

knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Within fifteen (15) days of receipt of a written notice requesting a hearing, this matter will be scheduled for a hearing. Respondent may then appear, with or without the assistance of an attorney, at the hearing to present testimony, evidence, and argument relating to the matters contained herein. In the event such written notice requesting a hearing is not received within the above-stated thirty (30) day period of time, an Order Revoking Respondent's Agent and Investment Adviser Representative Registrations may be entered in this proceeding with no further notice.

By seeking to issue an Order Revoking Respondent's Agent and Investment Adviser Representative Registrations, the Division is not waiving any rights it may have to pursue additional remedies available to it for the above or other violations of the Act committed by the Respondent.

Executed and entered this the 11th day of August, 2009.

SOUTH CAROLINA OFFICE OF THE
ATTORNEY GENERAL

By: Tracy A. Meyers
Tracy A. Meyers
Assistant Attorney General
Securities Division
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-4731